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AN ERA OF GLOBAL RELATIONS: HOW INTERNATIONAL LAWS INFLUENCE DOMESTIC LAWS

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I. ABSTRACT

International Law is a field of law that is on constant debate on whether it could be considered as real law as there are no mechanisms to enforce it. There have been debates that international law affects the sovereignty of a nation and makes its way into domestic law through persuasion. It has been debated how international law functions in general. International law has a Western touch to it. It tries to impose Western culture on other nations has been one the most prevalent debates.

We can assume that this Western touch is due to the presence of certain ideologies in Western countries which are lacking in Eastern nations. International law can be considered as to be brought on about to maintain peace and world order and provide a way for nations to seek redressal in case their nation is faced with any foreign or internal disruption. This paper analyses what international law and domestic law are, and the difference between domestic and international law. How they differ in their meaning to the process of creating and implementing these laws.

The paper hopes to analyze and provide a solution on whether the laws made through international treaties and conventions have an impending effect on the domestic laws followed in a nation that has agreed to the treaty. It also tries to analyze whether the sovereignty of a nation is affected by international law. The paper concluded by stating that it is up to the discretion of the nations to a treaty whether they want to accept a treaty and implement the clauses of such treaty into their domestic laws.

They can be either dualists or monists concerning accepting international law and that international law's effect on domestic law is purely based on the decision of the state. The paper also concludes that the sovereignty of the state is not affected by international law as the states hold the ultimate power to accept or withhold a treaty.

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II. KEYWORDS

International law, domestic law, dualism, monism, international organizations, United Nations.

III. INTRODUCTION

The 21st-century world is rapidly developing. There is a need for access to more resources for development. The need for resources has made countries open up their national boundaries to other nations for trade and exchange of information, creating a globalized world. The increase in global relations has brought about the need for international laws to govern relationships on the global level.

International laws are introduced to reduce conflicts and promote peace among nations who are signatories to the treaty. These laws often affect how a country functions domestically as they try to incorporate the clauses of an international treaty into their domestic laws. This article tries to analyze international law in respect to domestic laws in India.

IV. RESEARCH OBJECTIVES

The research paper aims to find out the relationship between international law and domestic law. It tries to analyze how international laws affect domestic laws and whether they affect the sovereignty of a nation.

V. RESEARCH QUESTIONS

- Does International law affect the domestic law of a nation?
- Does International law endanger the sovereignty of a nation?

VI. RESEARCH HYPOTHESES

- It is assumed that all nations enter into agreements with each other and are parties to international treaties which are brought on about by the International Organisations.
- All nations enter into international treaties for their benefit and to maintain good relations with other nations.

VII. RESEARCH METHODOLOGY

This paper utilizes a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law. It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature.

Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources. The goal is to form logical conclusions and provide insights into the legal questions being studied. This paper aims to deliver a thorough and unified view of the legal structure relevant to the topic addressed.

VIII. LITERATURE REVIEW

The paper mostly falls back on books, case law, and legal terminologies. **Article 253** of the Constitution helps to address how in India international laws are to be implemented separately for them to be considered as separate and enforceable in the court of law. The articles published by the United Nations regarding the involvement of International Law in Domestic Law titled "***The Compilation: Part I. National Frameworks 2/5"*,** help us know about how countries can choose to be dualist or monist and decide on whether international law should affect their domestic law.

- **The Intersection of International Law and Domestic Law:** A Theoretical and Practical Analysis by Davíd Thór Björgvinsson explains; what are the theoretical and practical issues related to the intersection between domestic and international law. The book discusses how general theories, including monism and dualism, transpire in practice. The author has considered various pivotal areas ranging from the rules relating to the making of treaties and ratification of treaties, the doctrine of automatic incorporation and transformation, direct effect of international norms in the domestic system, and a discussion of principle of consistent interpretation.

Discussing the European Convention on Human Rights, he concludes that the traditional theories are still of significance but do not capture the intricacy of the different ways in which the legislator and the courts have given effect to international law at the domestic level.

- **Relationship between International and Municipal Law:** Comparative Analysis by Ayushman Patnaik explains how international law is different from municipal law and about dualism and monism in detail. **Antonio Cassese's "International Law"** is incisive and authoritative in its account of international law, contrasting traditional legal positions with developing and evolving laws.

It has wide coverage of international law, commenting on the changes that have taken place in this area of law recently—for instance, with the new chapter added to terrorism and extended revision to state responsibility. References were also made to the ***Vishaka & Ors vs State Of Rajasthan & Ors on 13 August 1997 1997 (6) SCC 241,*** to show how courts also depend on international guidelines to give their decisions in case there is a lack of domestic law or guidelines regarding an issue.

IX. MEANING, DEFINITION & EXPLANATION OF INTERNATIONAL LAW

According to Black's Law Dictionary International Law is "*the term given to the laws governing and determining the rights of independent nations during war or peace times.*"[2] International law determines the relationship between two or more nations. In domestic law, the law aims to regulate the behavior of individuals but in international law, the law aims at regulating the behavior of the states.[3] Domestic law also known as municipal law is "*specific to a particular city or county (known legally as a*

[2] INTERNATIONAL LAW Definition & Meaning, Black's Law Dictionary (Mar. 28, 2013), https://thelawdictionary.org/international-law/.

[3] Antonio Cassese, International Law 3 (2nd ed. 2005). Oxford University Press https://www.google.co.in/books/edition/International_Law/-UacAQAAQBAJ?hl=en&gbpv=1&dq=international%20law&pg=PA3&printsec=frontcover

"municipality") and the government bodies within those cities or counties. It covers a wide range of issues, including police power, zoning, education policies, and property taxes."[4]

A. Historical Evolution of International Law

International treaties and relations have existed since ancient times. The oldest international treaty existed between ancient Egypt and the Hittite Empire from the thirteenth century.[5] The Industrial Revolution increased the interdependence between countries as they were dependent on each other for resources or for a market to sell their goods.

The Industrial Revolution paved the way for the creation of international trade routes and encouraged relations between various nations or colonies. In the 20th century, the world was faced with World War 1 and World War II. These wars negatively influenced the functioning, economic stability, and maintenance of peace between the nations.

The war and inter-war period made the world nations realize the need to maintain peace among nations and promote inclusive growth. This gave birth to the United Nations Organisation, a supranational body that looks over maintaining peace among world nations. Treaties were signed and agreements were formed to control the functioning of the nations.

B. Comparison between International Law and Domestic Law

International Law is primarily concerned with the relationship between states.[6] In International law, the rule of law most often does not exist. The law is not above the state as the states decide if they want to follow it or not. International Law is mostly

[4] What is municipal law? - FindLaw, https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/municipal-law.html (last visited Jun 26, 2024).
[5] Stephen C Neff, A Short History of International Law, in International Law (Malcolm Evans ed., 3 ed. 2010), https://www.google.co.in/books/edition/International_Law/ZWecAQAAQBAJ?hl=en&gbpv=1 (last visited Jun 29, 2024).
[6] Relationship between International and Municipal Law: Comparative Analysis, INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION [ISSN 2581-9453] Volume 3 | Issue 3 2021 https://www.ijlsi.com/wp-content/uploads/Relationship-between-International-and-Municipal-Law-Comparative-Analysis.pdf

based on treaties, conventions, and protocols. There is no proper mechanism for the execution of International Law. International Law is created in the form of treaties to which the world nations are a party.

They come together and make the clauses of the treaty. Some nations might agree to all the clauses, some may agree to a few and some might completely disagree with the treaty. In International Law, it is a requirement that all the parties to a treaty must ratify it; only then does the treaty come into force.

Municipal law "*governs the interaction between individuals and the State and between individuals within a state*."[7] In Municipal Law the law is the sovereign and no one is above the law. Municipal laws are based on legislation and precedents. They have a proper legal system to ensure proper execution of the laws. Municipal laws are often created by the legislature by conducting discussions in the parliament and passing the bills which later on become laws.

X. RELATION BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW WITH REFERENCE TO THE INDIAN GOVERNMENT AND ITS POLICIES

After ratification, the nations who have agreed to this treaty are provided with the option to either create new laws based on this treaty and implement it separately or to implement it as part of their domestic law.[8] They can be either dualist or monist. Dualists consider International Law as separate from their domestic Laws. England is

[7] Relationship between International and Municipal Law: Comparative Analysis, INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION [ISSN 2581-9453] Volume 3 | Issue 3 2021 https://www.ijlsi.com/wp-content/uploads/Relationship-between-International-and-Municipal-Law-Comparative-Analysis.pdf

[8] The compilation: Part I. National Frameworks 2/5, United Nations, https://www.un.org/esa/socdev/enable/discom101.htm#:~:text=There%20is%20no%20rule%20of,systems%20of%20the%20States%20Parties. (last visited Jun 29, 2024).

a form of dualism.[9] No International Law has any effect on the English law until it is expressly added to the English Law.[10]

In India too the scenario is the same. Article 253 of the Indian Constitution states that *"Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."*[11]

This means that the Parliament can make laws on the matters which are decided on the International treaty or convention; only then are the provisions of such a treaty or convention enforceable in India. Several laws relating to Human Rights, Gender Equality, etc… exist in India owing to the international conventions which have taken place. The Universal Declaration of Human Rights and the Beijing Conference on Women have paved the way for the Indian Government to make laws in this regard.

The Indian Courts have also resorted to Guidelines established by international organizations for deciding on cases when there is a lack of presence of domestic legislature regarding the issue. In the *Vishaka & Ors vs State Of Rajasthan & Ors on 13 August 1997 1997 (6) SCC 241,* The court referred to the "*Convention on the Elimination of All Forms of Discrimination against Women."*[12] International laws are not present as such in a documented manner. They are derived from treaties and conventions. The countries that enter into these treaties enforce the clauses of these treaties into their domestic law so that they align with the requirements of other nations and world organizations.

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[9] The compilation : Part I. National Frameworks 2/5, United Nations, https://www.un.org/esa/socdev/enable/discom101.htm#:~:text=There%20is%20no%20rule%20of,systems%20of%20the%20States%20Parties. (last visited Jun 30, 2024).

[10] The compilation : Part I. National Frameworks 2/5, United Nations, https://www.un.org/esa/socdev/enable/discom101.htm#:~:text=There%20is%20no%20rule%20of,systems%20of%20the%20States%20Parties. (last visited Jun 30, 2024).

[11] Article 253: Legislation for giving effect to international agreements, Constitution of India (2024), https://www.constitutionofindia.net/articles/article-253-legislation-for-giving-effect-to-international-agreements/ (last visited Jun 30, 2024).

[12] Role of international conventions in "vishaka guidelines," iPleaders (2016), https://blog.ipleaders.in/role-international-conventions-vishaka-guidelines/ (last visited Jul 1, 2024).

The treaties often carry a Western influence and try to enforce the Western thoughts on other nations that ratify the treaty. The International laws though it does not implicitly have an extended control over how certain laws function in the national boundaries of the nation. When we look at the trade laws India has with other countries they are overall controlled by the trade regulations laid down by the World Trade Organisation. The conclusion we can get from this reasoning is that Domestic Law is influenced by International Law, though not at an extreme level.

XI. INTERNATIONAL LAW'S INFLUENCE ON THE SOVEREIGNTY OF A NATION

There have been questions on whether international law affects the sovereignty of a nation. "*Article 27 of the Vienna Convention of Law of treaties contains a provision pertaining to domestic laws and observance of treaties. It is stated that a party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty.*"[13] Other than this there is no mention of International Law imposing itself on the domestic functioning of a nation.

The nations are given the freedom to either be a dualist or monist state. They can choose whether they want to have international law separate from their domestic law and enforce it as domestic law as and when needed or they can choose to to have international law as one with domestic law. [14] Sometimes it is true that the sovereignty of a nation is at question in regard to international law as the nations believe that they must enforce the treaty they have agreed to in the International arena to maintain their image among the world nations.

It is at the discretion of the individual nations to a treaty that it might come into force. For a treaty to come into force all the nations who are parties to such a treaty must

[13] Davíd Thór. Bjorgvinsson, The intersection of International Law and domestic law: A theoretical and practical analysis (2017).https://books.google.co.in/books?id=4XXhCgAAQBAJ&newbks=1&newbks_redir=0&lpg=PR1&dq=comparison%20between%20international%20law%20and%20domestic%20law&pg=PR4#v=onepage&q&f=false

[14] The compilation: Part I. National Frameworks 2/5, United Nations, https://www.un.org/esa/socdev/enable/discom101.htm#:~:text=There%20is%20no%20rule%20of,systems%20of%20the%20States%20Parties. (last visited Jun 29, 2024).

ratify it. It is up to the nations whether they want to ratify it or not. Even if one nation refuses to ratify, the treaty would not come into force. Nations can either ratify it fully or hold it or use their powers of reservation to reserve certain clauses of the treaty and accept the rest. This shows us that it is up to the decision of the nation on whether it wants to give way to its sovereignty or not.

XII. CONCLUSION, SOLUTIONS, SUGGESTIONS & RECOMMENDATIONS

The paper starts by analyzing and understanding what international law and domestic law are. It tries to create a comparison between these two laws to make clear how they differ from each other. Accordingly, we get to know that domestic laws govern within the borders of the nation and are created and implemented by the legislature or government of the particular state. International law on the other hand is born from international treaties and conventions.

The paper hoped to answer two questions on how international law affects domestic law and whether it affects the sovereignty of a nation. After thorough analysis, it is found that international law does make its way into the domestic law and makes changes into the domestic laws but the decision to include it into their domestic laws lies with the government of the state.

They can decide whether they want to be dualists or monists concerning international law. This shows that domestic law is affected by international law but only at the decision of the leaders of the state or the government and thereby it can also be concluded that it does not affect the sovereignty of a nation.

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